

## **Senate Bill No. 883**

### **CHAPTER 342**

An act to amend Section 166 of the Penal Code, relating to domestic violence.

[Approved by Governor September 13, 2016. Filed with  
Secretary of State September 13, 2016.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

SB 883, Roth. Domestic violence: protective orders.

Existing law generally punishes the willful disobedience of a court order as contempt of court by imprisonment in a county jail for a term not exceeding 6 months, a fine not exceeding \$1,000, or both that imprisonment and fine. Existing law makes the willful and knowing violation of specified protective orders or stay-away court orders punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than \$1,000, or by both that imprisonment and fine for a first offense, and makes a 2nd or subsequent conviction for a violation of these specified protective orders or stay-away court orders occurring within 7 years of a prior conviction and involving an act of violence or credible threat of violence punishable as either a misdemeanor or a felony. If probation is granted upon conviction of a willful and knowing violation of these specified protective orders or stay-away court orders, existing law requires the court to impose a minimum period of probation of 36 months, a criminal protective order protecting the victim from further acts of violence, threats, stalking, sexual abuse, and harassment, a minimum fine of \$500, successful completion of a batterer's program, and a specified amount of appropriate community service, among other requirements.

Under existing law, any person who willfully inflicts corporal injury resulting in a traumatic condition upon a spouse or former spouse, cohabitant or former cohabitant, fiancé or fiancée, or someone with whom the offender has, or previously had, an engagement or dating relationship, or the mother or father of the offender's child, is guilty of a felony or a misdemeanor. Upon a conviction under that provision, existing law authorizes the sentencing court to issue an order restraining the defendant from any contact with the victim for up to 10 years.

This bill would make a willful and knowing violation of the above protective order issued for the conviction of inflicting a corporal injury resulting in a traumatic condition punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding \$1,000, or by both that imprisonment and fine. The bill would make a 2nd or subsequent violation occurring within 7 years involving an act of violence or a credible threat of violence punishable as a felony or a misdemeanor. If probation is

granted for a violation of this protective order, the bill would require the court to impose a minimum period of probation of 36 months, a criminal protective order protecting the victim from further acts of violence, threats, stalking, sexual abuse, and harassment, a minimum fine of \$500, successful completion of a batterer's program, and a specified amount of appropriate community service, among other requirements. By increasing the punishment for a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. Section 166 of the Penal Code is amended to read:

166. (a) Except as provided in subdivisions (b), (c), and (d), a person guilty of any of the following contempts of court is guilty of a misdemeanor:

(1) Disorderly, contemptuous, or insolent behavior committed during the sitting of a court of justice, in the immediate view and presence of the court, and directly tending to interrupt its proceedings or to impair the respect due to its authority.

(2) Behavior specified in paragraph (1) that is committed in the presence of a referee, while actually engaged in a trial or hearing, pursuant to the order of a court, or in the presence of any jury while actually sitting for the trial of a cause, or upon an inquest or other proceeding authorized by law.

(3) A breach of the peace, noise, or other disturbance directly tending to interrupt the proceedings of the court.

(4) Willful disobedience of the terms as written of any process or court order or out-of-state court order, lawfully issued by a court, including orders pending trial.

(5) Resistance willfully offered by any person to the lawful order or process of a court.

(6) The contumacious and unlawful refusal of a person to be sworn as a witness or, when so sworn, the like refusal to answer a material question.

(7) The publication of a false or grossly inaccurate report of the proceedings of a court.

(8) Presenting to a court having power to pass sentence upon a prisoner under conviction, or to a member of the court, an affidavit, testimony, or representation of any kind, verbal or written, in aggravation or mitigation of the punishment to be imposed upon the prisoner, except as provided in this code.

(9) Willful disobedience of the terms of an injunction that restrains the activities of a criminal street gang or any of its members, lawfully issued by a court, including an order pending trial.

(b) (1) A person who is guilty of contempt of court under paragraph (4) of subdivision (a) by willfully contacting a victim by telephone or mail, or directly, and who has been previously convicted of a violation of Section 646.9 shall be punished by imprisonment in a county jail for not more than one year, by a fine of five thousand dollars (\$5,000), or by both that fine and imprisonment.

(2) For the purposes of sentencing under this subdivision, each contact shall constitute a separate violation of this subdivision.

(3) The present incarceration of a person who makes contact with a victim in violation of paragraph (1) is not a defense to a violation of this subdivision.

(c) (1) Notwithstanding paragraph (4) of subdivision (a), a willful and knowing violation of a protective order or stay-away court order described as follows shall constitute contempt of court, a misdemeanor, punishable by imprisonment in a county jail for not more than one year, by a fine of not more than one thousand dollars (\$1,000), or by both that imprisonment and fine:

(A) An order issued pursuant to Section 136.2.

(B) An order issued pursuant to paragraph (2) of subdivision (a) of Section 1203.097.

(C) An order issued after a conviction in a criminal proceeding involving elder or dependent adult abuse, as defined in Section 368.

(D) An order issued pursuant to Section 1201.3.

(E) An order described in paragraph (3).

(F) An order issued pursuant to subdivision (j) of Section 273.5.

(2) If a violation of paragraph (1) results in a physical injury, the person shall be imprisoned in a county jail for at least 48 hours, whether a fine or imprisonment is imposed, or the sentence is suspended.

(3) Paragraphs (1) and (2) apply to the following court orders:

(A) An order issued pursuant to Section 6320 or 6389 of the Family Code.

(B) An order excluding one party from the family dwelling or from the dwelling of the other.

(C) An order enjoining a party from specified behavior that the court determined was necessary to effectuate the orders described in paragraph (1).

(4) A second or subsequent conviction for a violation of an order described in paragraph (1) occurring within seven years of a prior conviction for a violation of any of those orders and involving an act of violence or “a credible threat” of violence, as provided in subdivision (c) of Section 139, is punishable by imprisonment in a county jail not to exceed one year, or in the state prison for 16 months or two or three years.

(5) The prosecuting agency of each county shall have the primary responsibility for the enforcement of the orders described in paragraph (1).

(d) (1) A person who owns, possesses, purchases, or receives a firearm knowing he or she is prohibited from doing so by the provisions of a protective order as defined in Section 136.2 of this code, Section 6218 of

the Family Code, or Section 527.6 or 527.8 of the Code of Civil Procedure, shall be punished under Section 29825.

(2) A person subject to a protective order described in paragraph (1) shall not be prosecuted under this section for owning, possessing, purchasing, or receiving a firearm to the extent that firearm is granted an exemption pursuant to subdivision (h) of Section 6389 of the Family Code.

(e) (1) If probation is granted upon conviction of a violation of subdivision (c), the court shall impose probation consistent with Section 1203.097.

(2) If probation is granted upon conviction of a violation of subdivision (c), the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(A) That the defendant make payments to a battered women's shelter, up to a maximum of one thousand dollars (\$1,000).

(B) That the defendant provide restitution to reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

(3) For an order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under this subdivision or subdivision (c), the court shall make a determination of the defendant's ability to pay. In no event shall an order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support.

(4) If the injury to a married person is caused in whole, or in part, by the criminal acts of his or her spouse in violation of subdivision (c), the community property shall not be used to discharge the liability of the offending spouse for restitution to the injured spouse required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents required by this subdivision, until all separate property of the offending spouse is exhausted.

(5) A person violating an order described in subdivision (c) may be punished for any substantive offenses described under Section 136.1 or 646.9. A finding of contempt shall not be a bar to prosecution for a violation of Section 136.1 or 646.9. However, a person held in contempt for a violation of subdivision (c) shall be entitled to credit for any punishment imposed as a result of that violation against any sentence imposed upon conviction of an offense described in Section 136.1 or 646.9. A conviction or acquittal for a substantive offense under Section 136.1 or 646.9 shall be a bar to a subsequent punishment for contempt arising out of the same act.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime

within the meaning of Section 6 of Article XIII B of the California Constitution.

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